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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,214	03/24/2004	Matthew R. Cook	10773/65	3931
757 7590 03/09/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3782	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/808,214

Applicant(s)

COOK ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 20-22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22, 24 and 27 is/are allowed.
- 6) ☒ Claim(s) 1-7, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss in view of Powell. Strauss discloses all structure of the claimed container except a second container within the first container. Powell teaches the well known concept of packaging smaller containers within a larger container. It would have been obvious to package a smaller container within the larger container of Strauss as taught by Powell as a mere choice of what one wishes to package within the container. The selection of one or more smaller containers as contents for a larger container is a notoriously well known concept in this art. It is noted that Strauss discloses a lid formed by two sections 9, 9 which is operational between a first position closing the top and a second position where one of the lid portions 9 is folded outwardly while the other lid portion 9 is closed and covers only a portion of the top opening. Strauss also discloses a handle 12 on the lid which includes a pair of handle tabs 13 positionable in a pair of container slots 20 in the fully closed position of the lid and a pair of handle slots 21, 22 configured to connect with a pair of container tabs 19 to secure the lid in the second position as claimed.

3. Claims 1, 2, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Koltz or EP '568 (figs. 6-11 emb), each in view of Powell. Each of Koltz and EP '568

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discloses all structure of the claimed container except a second container within the first container. Powell teaches the well known concept of packaging smaller containers within a larger container. It would have been obvious to package a smaller container within the larger container of either Koltz or EP '568 as taught by Powell as a mere choice of what one wishes to package within the container. The selection of one or more smaller containers as contents for a larger container is a notoriously well known concept in this art. It is noted that each of Koltz and EP '568 evidences tabs and slots in like manner to those within Strauss as detailed in paragraph 2 above.

4. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 in either paragraph 1 or 2 above, and further in view of either Tracy or Boster. Each of modified Strauss, Koltz and EP '568 evidences all structure of the claimed dispenser except an opening within the second container cover (cls. 3, 5) or a portion of the cover that can be removed to create an opening (cl. 4). Each of Tracy and Boster teaches that it is known to make a container cover with an inner removable cap. It would have been obvious to make the cover in any one of modified Strauss, Koltz or EP '568 with an inner removable cap as taught by either Tracy or Boster to facilitate dispensing access to the contents and to prevent spilling during dispensing.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in either paragraph 2 above, and further in view of Strauss. Each of modified Koltz and EP '568 evidences all structure of the claimed container except formation of the container from corrugated board. Strauss teaches that it is known to make paperboard containers from corrugated paperboard. It would have been obvious to make the container in either Koltz

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or EP '568 from corrugated board as taught by Strauss to obtain the well known advantages of corrugated paperboard over standard paperboard, i.e. insulation, strength, etc.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in either paragraph 1 or 2 above, and further in view of Bahler. Each of modified Strauss, Koltz and EP '568 evidences all structure of the claimed container except formation of the inner container from polyethylene. Bahler teaches that it is known to provide an inner packaged container made from polyethylene within an outer paperboard container. It would have been obvious to make the inner packaged container in any one of modified Strauss, Koltz or EP '568 from polyethylene as taught by Bahler since polyethylene is a cheap, readily available and easily moldable plastic material. Polyethylene is notoriously well known in the container art.

Allowable Subject Matter

7. Claims 20-22, 24 and 27 are allowed.

Response to Arguments

8. Applicant's arguments filed 09 January 2007 have been fully considered but they are not persuasive.

As indicated above, each of Strauss, Koltz and EP '568 are considered to meet claim 1 as now set forth except for the inclusion of a second container within the first container. No distinction is seen between the claimed container and that evidenced in each of Strauss, Koltz and EP '568 as a result of the claimed intended positioning of the lid in a fully closed or partially closed position, i.e. each lid in the prior art references is considered capable of such positioning with the tabs and slots arranged as claimed.

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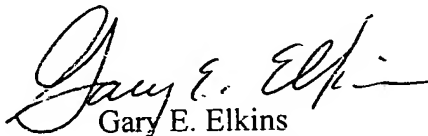
Conclusion

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3782

gee
05 March 2007